In the High Court of Punjab and Haryana, Chandigarh

C.W.P. No. 12434 of 1999

Date of Decision: September 22, 2006

Pargat Singh

…Petitioner

Versus

Union of India & Another

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr. G.S. Chahal, Advocate,
for the petitioner.

Mr. S.K. Sharma, Central Govt. Standing Counsel,
for the respondents.

JUDGMENT

M.M. KUMAR, J.

The petitioner is aggrieved by the order dated 19.3.1998 (P-2) passed by the Officer Incharge Records - respondent No. 2, rejecting his claim for grant of disability pension on account of amputation of leg above knee suffered by him during his service in the army.

Brief facts of the case are that the petitioner was enrolled as a Sepoy on 24.6.1994. He has come on leave to his home town. The Company in which he was serving, namely, Sikh Regiment had

desired him to bring certain items for use by the Unit Personnel. Accordingly, he was to bring religious items like Karra (Steel Bangle), Kanga (Comb) etc. It is asserted that on 16.6.1996, when he was proceeding on his scooter after collecting those items, he met with an accident with a truck. On gaining consciousness, he found himself in Beas Hospital and thereafter he was shifted to Military Hospital, Jalandhar. He was then shifted to Pune where his one leg above knee has to be amputated. He remained hospitalised at Pune for about three months and then reported to his Unit at Ramgarh during November, 1996. He was boarded out of service on 27.3.1997. On account of his invalidation his case was taken up by respondent No. 2 as is evident from the letter dated 22.9.1997 (P-1) for grant of disability pension. However, the claim was declined by observing as under:-

> "2. It is to inform you that your disability pension has been rejected by CCDA (P) Allahabad vide their letter No. g-3/65/419/6-97 dated 4 March 98 on the grounds that your disability "AMPUTATION ABOVE KNEE" on account of which you have been invalided out of service is:-
>
> a) Neither attributable to nor aggravated by military service.
>
> b) Constitutional in nature and not related to service.

3. A copy of the sheet containing decision of the Medical Advision (Pensions) attached to CCDA (P) Allahabad, is enclosed which is self explanatory."

The averments as stated in the writ petition have been controverted in the written statement filed. It has been stated that the petitioner, in fact, had met with an accident with a bullock cart while he was driving his scooter and not with a truck as alleged. The version of the petitioner to bring certain items from Mehta has also been controverted as it is not borne out from record. It has further been asserted that the injury suffered by the petitioner is neither attributable or aggravated by military service and, therefore, no pension is admissible to the petitioner. A further stand has been taken that the appeal filed by the petitioner was under consideration.

Mr. G.S. Chahal, learned counsel for the petitioner has argued that when an army personnel is on casual leave then according to the provisions of the Army Act, 1950 (for brevity, 'the Act') he is deemed to be on duty. In support of his submission, learned counsel has placed reliance on a judgment of Hon'ble the Supreme court in the case of **Joginder Singh v. Union of India, 1996 (2) SLR 149**. He has also placed reliance on two Division Bench judgments of this court in the case of **Shri Krishan Dahiya v. Union of India, 1996 (3) PLR 468** and **Chatroo Ram v. Secretary Defence and others, 1991 (1) SLR 678**. Placing reliance on Regulations 173 and 175 of the Pension Regulations for the Army, 1961 (for brevity, 'the

Regulations') and Rule 2 to Appendix II, learned counsel has argued that disablement has to be accepted as due to military service as it has arisen during military service and continues to be permanent disability. He has also placed reliance on para 13 of the Entitlement Rules to Casualty Pensionary Awards to the Armed Forces Personnel, 1982 (for brevity, 'the 1982 Rules'), which provides that when an army personnel is on duty, any injury sustained must be deemed to have resulted from military service.

Mr. S.K. Sharma, learned counsel for the respondents, however, on the other hand has placed reliance on a Division Bench judgment of this Court in the case of **Jarnail Singh v. Union of India, 1997(3) SCT 484** and has argued that an injury must be related to army service. Placing reliance on para 21 of the judgment learned counsel has submitted that in the aforementioned judgment no disability pension could be granted because the claimant had lost his hand while working on a cutter machine during harvesting season. According to the learned counsel unless there is a relationship with the military duty, disability suffered will not earn any disability pension.

After hearing learned counsel for the parties, we are of the considered view that this petition deserves to be allowed. It would be necessary to make reference to Regulations 173 and 175 of the Regulations, Rule 2 to Appendix II of the Regulations and Para 13 of the 1982 Rules and the same reads as under:-

Regulation 173 and 175 of the Regulations:

"173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20 per cent or over.

The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II.

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xxx xxx xxx xxx

175. If the disability of an individual is wholly or partly due to his serious negligence or misconduct, the amount of disability pension otherwise admissible may be reduced at the discretion of the competent authority."

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Rule 2 to Appendix II of the Regulations:

"Disablement or death shall be accepted as due to military service provided it is certified by appropriate medical authority that:-

(a) the disablement is due to a wound, injury or disease which –

(i) is attributable to military service; or

(ii) existed before or arose during military service and has been and remains aggravated thereby."

x x x x x x x x x

Para 13 of the 1982 Rules:

"13. In respect of accidents or injuries, the following rules shall be observed:-

(a) Injuries sustained when that man is 'on duty' so defined shall be deemed to have resulted from military service, but in cases of injuries due to serious negligence/misconduct the question of reducing the disability pension will be considered.

(b) In cases of self-inflicted injuries whilst on duty, attributability shall not be considered unless it is established that service factors were responsible for such action, in cases where attributability is conceded, the question of grant of disability pension at full or at reduced rate will be considered."

The question as to whether the period of casual leave of a person subject to the Act could be termed as a duty period is no longer res-integra and the same has been answered in the case of Jarnail Singh (supra). By placing reliance on the judgments of Hon'ble the Supreme Court in the cases of **Smt. Charanjit Kaur v. Union of India, 1994 (2) SCT 235** and Joginder Singh's case (supra) as well as Division Bench judgments of this Court in the cases of Shri

Krishan Dahiya (supra) and Chatroo Ram (supra), the Division Bench of this Court in para 9 of Jarnail Singh's case (supra) has held that a person subject to the provisions of the Army Act when proceeds on casual leave, has to be treated on duty and would be entitled to the benefits accruing therefrom in accordance with law.

On the question as to whether every injury suffered by the member of armed forces during the period of casual leave has to be termed as attributable to or aggravated by military service, the Division Bench in Jarnail Singh's case (supra) has placed reliance on a judgment of Hon'ble the Supreme Court in the case of **Union of India v. Baljit Singh, 1997 (1) SLR 98**, and held that an accident or injury suffered by the member of the armed forces must have some casual connection to the aggravation or attributability to military service and concluded its view in paras 18, 19 and 20, which reads as under:-

> "18. On proper analysis of the above discussion the position that emerges is that an accident or injury suffered by a member of the Armed forces must have some casual connection to the aggravation or attributability to military service and at least should arise from such activity of the member of the force as he is expected to maintain or do in his day-to-day life as a member of the force. The nexus between the two is not apparently one so as to cover every injury or accident.

The hazards of Army service cannot be stretched to the extent of unlawful and entirely un-connected acts or omissions on the part of the member of the force even when he is on leave. The fine line of distinction has to be drawn between the matters connected, aggravated or attributable to military service and the matters entirely alien to such service. What falls *ex-facie* in the domain of an entirely private act which may even extend to the sphere of undesirable and unlawful activity of such member, cannot be treated as legitimate basis for claiming the relief under these provisions. At best, the member of the force can claim disability pension if he suffers disability from an injury while on casual leave even if it arises from some negligence or misconduct on the part of the member of the force, so far it has some connection and nexus to the nature of the force. At least remote attributability to service and expected standards of behaviour and living of the member of the force appears to be the condition precedent to claim under Rule 173. The act of omission and commission on the part of the member of the force must satisfy the test of prudence, reasonableness and expected standards of behaviour.

19. We may elucidate the above principle by giving a very simple example that if a person on casual

leave and subject to this act goes to canteen to buy things or takes his children for treatment to hospital and on the way meets with an accident, may be arising out of his negligence or contributory negligence, suffers injuries causing permanent disability, in our view, would be entitled to claim the benefit under Rule 173. Similarly a person who joins Army is not found to be suffering from any disease, but subsequently suffers from a disease which renders him liable for being invalidated out of Army on such ill-health, such a disease would be attributable and/or aggravated by military service and would entitle him to take benefit of these regulations.

20. Thus, to sustain a claim of disability pension, the member of the Armed force must be able to show a normal nexus between the act, omission or commission resulting in an injury to the person and the normal expected standard of duties and way of life expected from member of such disciplined force. It is so primarily for the reason that no unlawful activity or commission can validly by support a lawful claim. Violation of expected standards can not form a fair ground for raising a claim under these provisions. Every rule is expected to be understood so as to be implemented lawfully and to achieve its object, but equally true is that no lawful activity can be brought to

> the aid of an unlawful act and that too by stretching the rules of present kind because it may ultimately result in abuse of the benefit sought to be granted by such rule. It has to be understood that no strait-jacket formula could be provided for such cases and each case has to be judged on its own merits. We have attempted to provide certain guiding principles which could help the authorities concerned while deciding such a claim."

When the facts of the present case are examined in the light of the law laid down by the Division Bench in Jarnail Singh's case (supra), we are of the view that the illustration taken by the Division Bench in para 19 would apply to the facts of the present case. The petitioner looks to have gone somewhere on scooter and had admittedly met with an accident with a bullock cart, which may at best might have caused out of his own negligence. A person who is subject to the Army Act could have been deprived of disability pension if he sustained injuries while indulging in illegal fight or has violated expected standards. Therefore, we find that the claim made by the petitioner is meritorious and deserves to succeed.

In view of the above, the writ petition is allowed and a direction is issued to the respondents to grant and release to the petitioner disability pension in accordance with aw after duly assessing his disability with effect the date he has been invalidated out from service i.e. 27.3.1997. The needful shall be done within a

period of three months from the date a certified copy of this order is received by the respondents. If the needful is not done within a period of three months then the petitioner shall be entitled to interest at the rate of 8% per annum from the date the amount is due till the date of its payment.

(M.M. KUMAR)
JUDGE

(M.M.S. BEDI)
JUDGE

September 22, 2006
Pkapoor